

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JACK SERRATELLI	:	CIVIL ACTION
	:	
v.	:	
	:	
HICK, MUSE, TATE &	:	
FURST, INC., <u>et al.</u>	:	NO. 98-633

**MEMORANDUM AND ORDER**

BECHTLE, J.

JUNE 4, 1998

Presently before the court are Defendants' motions to dismiss, Defendants' motions for an injunction and other equitable relief, plaintiff Jack Serratelli's ("Plaintiff") motion for default judgment and the responses thereto. For the reasons set forth below, the court will grant Defendants' motions to dismiss and for injunctions and will deny Plaintiff's motion for default judgment.

**I. BACKGROUND**

Plaintiff, proceeding pro se, brought this civil action against Defendants<sup>1</sup> seeking relief under a variety of federal and

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1. The complaint lists the defendants as the following individuals and business entities in this order: Hick, Muse, Tate & Furst, Inc.; John R. Tillotson; Irving Joel; Frank Greco; Stetson Hats; Hat Co./Hat Brands, Inc.; Miller Brothers; Resistol Hat Co.; Paulo Zakia; Chapeus Vincente Cury, SA; Christian Thomas; Rene Thomas & Fils; Lucien Waigneir, S.P.R.L.; Peter Serratelli; Dean Serratelli; Stein Brothers Import & Export, Inc.; Clarence C. Newcomer, U.S.D.J.; Anthony H. Guerino; Donald J. Rinaldi; Jack Serratelli, Senior; Maria Serratelli Smith; Anna Marie La Sapio. Several of the business entities have changed names or are actually divisions of other business entities.

state laws.<sup>2</sup> Plaintiff first alleges Sherman Act and Clayton Act antitrust claims against a number of the Defendants (the "Antitrust Defendants").<sup>3</sup> Plaintiff alleges that after working for his family's business in the "Hat/Fur Felt industry" he incorporated his own business, "Two Associates, Inc.," in 1992. Plaintiff attempted to solicit business by phone and letter from a number of the Antitrust Defendants. Plaintiff's attempts were unsuccessful. According to Plaintiff, the Antitrust Defendants utilized exclusive dealing contracts to suppress competition in the Hat/Fur Felt industry. Plaintiff was then forced to dissolve Two Associates, Inc. due to the Antitrust Defendants' refusal to deal with Plaintiff.

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2. This court has original jurisdiction over Plaintiff's federal claims because they arise under federal law. 28 U.S.C. § 1331. The court has supplemental jurisdiction over Plaintiffs' state law claims to the extent they form part of the same case or controversy as the federal claims. 28 U.S.C. § 1367(a). The court will discuss the lack of jurisdiction over certain specific defendants in detail below.

3. Those defendants include: Hick, Muse, Tate & Furst, Inc.; Hat Co./Hat Brands, Inc.; Miller Brothers; Stetson Hats; Resistol Hat Co.; John R. Tillotson; Frank Greco; Irving Joel; Paulo Zakia; Chapeus Vincente Cury, SA; Christian Thomas; Rene Thomas & Fils; Lucien Waigneir, S.P.R.L.; Stein Brothers Import & Export, Inc.; and Peter and Dean Serratelli.

The court notes that Plaintiff brought a virtually identical claim in another case against the following defendants: Hat Co./Hat Brands, Inc.; Miller Brothers; Stetson Hats; Resistol Hat Co.; Frank Greco; Irving Joel; Paulo Zakia; Chapeus Vincente Cury, SA; Christian Thomas; Rene Thomas & Fils; Lucien Waigneir, S.P.R.L.; and Stein Brothers Import & Export, Inc. See Serratelli v. Joel, Docket No. 97-cv-496 ("Serratelli I").

A second virtually identical claim was brought against all the Antitrust Defendants. See Serratelli v. Hick, Muse, Tate & Furst, Inc., Docket No. 97-cv-4767 ("Serratelli II").

Plaintiff next alleges that United States District Court Judge Clarence C. Newcomer violated federal laws and the Federal Rules of Civil Procedure.<sup>4</sup> Plaintiff claims Judge Newcomer engaged in "misconduct" during a previous civil antitrust action that Plaintiff brought against many of the present defendants. Plaintiff alleges that Judge Newcomer engaged in misconduct by allowing an attorney to "practice before this Federal bar when he was out of its jurisdiction," by not holding certain hearings, by entering several orders and by engaging in other judicial activity. Plaintiff alleges that Judge Newcomer's actions resulted in a denial of Plaintiff's right to contract and his right to a trial by jury.

Plaintiff also alleges that defendants Anna Marie La Sapio ("Mrs. La Sapio") and attorney Anthony H. Guerino ("Guerino") engaged in "coercion tactics" to defeat Plaintiff's previous claims in Serratelli I, Serratelli II and a civil action Plaintiff filed in New Jersey against his brothers Peter and Dean Serratelli (the "New Jersey Action"). Plaintiff alleges fraud and violation of criminal statutes. Plaintiff also alleges that Mrs. La Sapio and Guerino initiated a criminal investigation of Plaintiff related to a debt Mrs. La Sapio claimed Plaintiff owed her. Plaintiff also alleges that Guerino engaged in violations of state attorney ethics, impersonated a District Attorney and made settlement offers to Plaintiff "evidencing the harassment

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4. Plaintiff brought a virtually identical claim against Judge Newcomer in Serratelli II.

and coercive tactics to force plaintiff to withdraw his complaint." (Compl. ¶ 48.).

Plaintiff also claims attorney Donald J. Rinaldi ("Rinaldi") assisted Mrs. La Sapio and Guerino in their activities. Specifically, Plaintiff claims Rinaldi improperly witnessed or effected the service of the Plaintiff of a complaint in a civil action instituted by Mrs. La Sapio (the "Mrs. La Sapio Action"). Plaintiff also alleges Rinaldi then made a settlement offer in the New Jersey Action "evidencing [Rinaldi's] direct involvement in coercing plaintiff to withdraw his civil action . . . ." (Compl. ¶ 55.) Plaintiff asserts that Rinaldi also discussed the withdrawal of the Mrs. La Sapio Action as part of the settlement agreement. Finally, Plaintiff alleges that Rinaldi engaged in false allegations against Plaintiff in court documents and perpetrated fraud along with two New Jersey judges by having "illegal restraints" put in place against him.

Plaintiff also claims that there are ongoing coercive tactics to defeat his claims. Plaintiff claims that his sister, Maria Serratelli Smith ("Smith"), has sent him various mailings that defame and threaten him in violation of United States Codes. Plaintiff alleges that the letters and postcards contained statements including: "send me the names of medication [you're] taking if any. I know you don't feel well." (Compl. ¶ 70.) (emphasis omitted); "Dear Obnoxious." Id. at ¶ 70; "Send me names of drugs you're taking. I'll help you." Id. at ¶ 70. Plaintiff also alleges that Smith discussed in a letter selling a

house she owned and giving some of the proceeds to Mrs. La Sapio. Plaintiff alleges Smith made statements including that she will "sell our house & settle dispute with Mrs. La Sapio with money." (Compl. ¶ 73.) Plaintiff alleges that Mrs. La Sapio owes him a debt and that Ms. Smith's "offer to defendant La Sapio [is] a means in which defendant La Sapio will have the financial resources guaranteed to pay off the rest of the loan owed to plaintiff after all these years with interest, or else, in the alternative defendant La Sapio will suffer through more litigation as the result of defendant Smith's action." Id. ¶ 73 Other of Smith's letters included comments to Plaintiff such as "Do not despair. Help is on the way. We will buy the 'lien' from Mrs. La Sapio & rescind it." Id. ¶ 74. Plaintiff also alleges that one letter contained the threat "Jack: For your own sake open this." Id. ¶ 78.

Plaintiff also includes allegations that his brothers, Peter and Dean Serratelli have wrongly denied in court documents that Plaintiff played a role in the formation and development of Stein Brothers Import & Export, Inc. Plaintiff alleges he was pushed out of the business and that the business then turned its focus towards the objective of monopolizing the import of raw materials for the Hat/Fur Felt industry.

Plaintiff also alleges that his father, Jack Serratelli, Sr., engaged in wrongful business dealings at some time during the early to mid-1980's. Plaintiff alleges Jack Serratelli, Sr. engaged in embezzlement and misrepresentations

involving Plaintiff's stock holdings in a family owned company. Plaintiff alleges that he never received compensation for the value of his shares in that company.

On February 5, 1998, Plaintiff filed his Complaint. Defendants have filed several motions, individually or in groups, asking the court to dismiss the Complaint under Federal Rule of Procedure 12(b)(6) and for an injunction barring Plaintiff from filing additional complaints with the court without leave of court. Also, Mrs. La Sapio and Smith, both acting pro se, have filed answers and counterclaims along with their motions to dismiss. Ms. Smith also requests equitable relief from the court.

## II. DISCUSSION

### A. Defendants' Motions to Dismiss

#### 1. Standard

For the purposes of a motion to dismiss, the court must accept as true all well-pleaded allegations of fact in the plaintiff's complaint, construe the complaint in a light most favorable to the plaintiff and determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988), cert. denied, 489 U.S. 1065 (1989) (citations omitted). The court, however, need not accept as true legal conclusions or unwarranted factual inferences. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). If "it appears beyond doubt

that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief," the complaint will be dismissed. Conley, 355 U.S. at 45.

## **2. Discussion**

Plaintiff's Complaint contains a number of claims, some of which are not legally or factually related and many of which lack the essence of a genuine legal dispute. Plaintiff's factual contentions are often vague or riddled with legal conclusions. Many of the claims against Defendants are unrelated and the complaint fails to state any independent jurisdiction for the unrelated claims. The Complaint does not articulate the specific injuries Plaintiff suffered from many of the allegedly wrongful acts of which he complains. Also, Plaintiff requests the same relief against all Defendants despite the differing claims against them. It is not clear that the Complaint properly joins the Defendants or that diversity jurisdiction exists over many of the claims. The court has given Plaintiff the requisite leeway accorded him in light of his pro se status. Haines v. Kerner, 404 U.S. 519, 520 (1972). However that leeway is not without limits. See e.g., Watts v. I.R.S., 925 F. Supp. 271, 274-75 (D.N.J. 1996); Logan v. Stovall, No. 95-6952, 1996 WL 50550 (E.D. Pa. Jan 31, 1996). The court has analyzed the factual allegations, as best as they can be understood, in the light most favorable to plaintiff under the appropriate legal theories.

Defendants have filed five motions to dismiss. Some of the motions were filed by certain Defendants acting individually

and others were filed in groups. In their motions, Defendants put forth multiple reasons why the court should dismiss the Complaint. The court will address the motions to dismiss as to each of the six counts contained in the Complaint.

**a. First Count**

The court will grant the motion to dismiss this count because Plaintiff's claim is barred by the doctrine of res judicata. Each of the Antitrust Defendants named in Count I of the Complaint were named as defendants in Serratelli II. With the exception of Hick, Muse, Tate & Furst, Inc., John R. Tillotson and Peter and Dean Serratelli, all of the Antitrust Defendants were also named as defendants in Serratelli I as well. Both previous cases contained almost identical allegations of antitrust violations, namely a refusal to contract with Plaintiff's corporation. Both of those cases were dismissed, the second explicitly with prejudice. The Supreme Court has stated that "[u]nder res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Allen v. McCurry, 449 U.S. 90, 94 (1980). The court further noted that the doctrine of res judicata serves to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." Id. at 94. The court finds that the doctrine of res judicata applies to Plaintiff's antitrust claim and so it is barred.



Additionally, Plaintiff's Complaint fails to state a claim under antitrust laws. Plaintiff alleges he solicited business for his company by letter and phone contacts with some of the Antitrust Defendants. Plaintiff further alleges that the Antitrust Defendants refused to contract with his company. Plaintiff's Complaint purports to bring suit under Section 1, 2 and 6(a) of the Sherman Act as well as the Clayton Act. The facts as stated in the Complaint allege what appears to be a refusal to deal. A concerted refusal to deal is a violation of Section 1 of the Sherman Act. However, the Complaint does not allege the crucial element of a Section 1 claim--a combination or conspiracy. 15 U.S.C. § 1. Plaintiff only alleges that the Antitrust Defendants refused to contract with his company. As Judge Newcomer previously observed in Serratelli I, the individual Antitrust Defendants' refusal to deal with Plaintiff as alleged in the Complaint is not an antitrust violation. The court will dismiss the claims against the Antitrust Defendants.

**b. Second Count**

Judge Newcomer has filed a motion to dismiss the Complaint. The Complaint alleges "misconduct" by Judge Newcomer in his role presiding over Serratelli I. The court will grant the motion to dismiss for three reasons.

First, the Complaint against Judge Newcomer is barred by the doctrine of res judicata. Plaintiff's complaint in Serratelli II included a virtually identical claim against Judge Newcomer. In Serratelli II, the claim was dismissed with

prejudice because Judge Newcomer was immune from suit under the factual allegations. Again, the doctrine of res judicata applies to Plaintiff's claim against Judge Newcomer and the purposes of that doctrine are served by applying it in this case.

Second, even if the court were to evaluate the ruling below anew, Plaintiff's claim against Judge Newcomer would still be barred under the doctrines of sovereign and absolute immunity. The Complaint alleges that Judge Newcomer engaged in misconduct while he presided over the case in Serratelli I. Plaintiff has sued Judge Newcomer in both his official and individual capacity. Under the doctrine of sovereign immunity, the United States or its employees acting in their official capacity are immune from suit absent express consent to such a suit. See, e.g., Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th Cir. 1985)(noting "a suit against IRS employees in their official capacity is essentially a suit against the United States. As such, absent express statutory consent to sue, dismissal is required")(citation omitted). No such express consent can be found with regard to Plaintiff's claim. Furthermore, Judge Newcomer is immune in his individual capacity under the doctrine of absolute immunity because he acted as a judicial officer and did not act in the clear absence of all jurisdiction. The Supreme Court has noted that "[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all

jurisdiction.'" Stump v. Sparkman, 435 U.S. 349, 356-57 (1978)(citation omitted). The court notes that a judge is not immune from a suit for injunctive relief. Pulliam v. Allen, 466 U.S. 522, 536-543 (1984). While Plaintiff's prayer for relief alludes to the fact that he "wishes to be free from 'illegal' permanent restraints," the Complaint does not allege that Judge Newcomer was responsible for implementing such ongoing restraints. From a reading of the Complaint in its entirety, it appears those restraints were the result of a state court order rather than an order entered by Judge Newcomer. Thus, to the degree that the Complaint could possibly be interpreted to request injunctive relief from Judge Newcomer in lifting such restraints, the court would be unable to compel Judge Newcomer to vacate such a state court order. Therefore, the Complaint fails to state a claim for which relief could be granted. Accordingly, Judge Newcomer is immune from Plaintiff's claims in Count II.

Third, the Complaint fails to state a legally cognizable claim against Judge Newcomer. The actions alleged in the Complaint as "misconduct" appear to be nothing other than the judicial administration of a case. Under the Rules Enabling Act, the Federal Rules of Civil Procedure "shall not abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072. Thus, to the degree Plaintiff alleges Judge Newcomer did not comply with federal or local rules of procedure, such allegations would not give rise to a private right of action. See, e.g., Van Skiver v. Hill, No. 96-1313, 1997 WL 86333, at \*4 (D. Kan. Feb 24,

1997)(holding that "the Federal Rules of Civil Procedure . . . do not create any private, federal cause of action."). Likewise, Judge Newcomer's dismissal of Plaintiff's civil case does not give rise to a constitutional civil rights action. If Plaintiff was dissatisfied with the results of the case or any rulings therein, the appropriate method of challenge would have been through the appeals process. The court will dismiss the claims against Judge Newcomer.

**c. Third Count**

In Plaintiff's third count, he alleges claims against Mrs. La Sapio, Guerino and Rinaldi. Most of the allegations contained in this count fail to state a claim. The main allegation in this count is that these three defendants utilized a New Jersey criminal investigation and a New Jersey civil action against Plaintiff in an attempt to defeat the antitrust claims contained this Complaint and Plaintiff's previous complaints in Serratelli I and II. Plaintiff alleges that Mrs. La Sapio and Guerino, acting as her attorney, "maliciously pursu[ed] unsubstantiated allegations" against him "with the expressed purpose of 'breaking' him in order to defeat his claims as stated in this complaint." (Compl. ¶ 43.) The court will assess this claim under the theory of malicious prosecution, rather than an abuse of process, because Plaintiff alleges that these three defendants instituted civil and criminal actions against him for an improper purpose. Compare Tedards v. Auty, 557 A.2d 1030, 1034 (N.J. Super. A. D. 1989)("An action for malicious abuse of

process will lie against one who uses a writ after its issuance solely to coerce or injure the defendant"). Because the relevant acts which Plaintiff alleges occurred in New Jersey, in this case New Jersey law would apply. New Jersey case law distinguishes between malicious prosecution of criminal cases and civil cases. The elements of a malicious prosecution action for a criminal case are that: "(1) a criminal action was instituted by defendant, (2) it was actuated by malice, (3) there was an absence of probable cause for the proceeding, and (4) it was terminated favorably to the plaintiff." JEM Marketing, LLC v. Cellular Telecomm. Indus. Ass'n, 705 A.2d 798, 804 (N.J. Super. A.D. 1998)(citing Lind v. Schmid, 337 A.2d 365 (N.J. 1975)). To state a claim for malicious prosecution of a civil case, "the plaintiff must establish that the original suit (1) was instituted without reasonable or probable cause; (2) was motivated by malice; (3) terminated favorably to the plaintiff in the malicious prosecution action; and (4) resulted in a 'special grievance' to the plaintiff." Giri v. Rutgers Cas. Ins. Co., 641 A.2d 1112, 1115 (N.J. Super. A.D. May 24, 1994)(citing Mayflower Indus. v. Thor Corp., 83 A.2d 246 (Ch. Dev. 1951), aff'd, 89 A.2d 242 (N.J. 1952)). Thus, the key distinction between a malicious prosecution case regarding a civil case and one regarding a criminal case is that a Plaintiff must demonstrate a "special grievance" in the civil context. The Supreme Court of New Jersey has stated that a "special grievance consists of interference with one's liberty or property." Penwaq Property Co., Inc. v.

Landau, 76 N.J. 595, 598, 388 A.2d 1265, 1265 (N.J. 1978). The court noted that "[c]ounsel fees and costs in defending the action maliciously brought may be an element of damage in a successful malicious prosecution, but do not in themselves constitute a special grievance necessary to make out the cause of action." Penwaq, 388 A.2d at 1266. Plaintiff's claim fails because he has not alleged an interference with liberty or property as a result of Mrs. La Sapio's civil suit that would constitute a special grievance. By Plaintiff's own allegations, the civil action was "closed out or administratively dismissed." (Compl. ¶ 44.) Plaintiff has not stated a claim under New Jersey law for malicious prosecution of Mrs. La Sapio's civil complaint.

The additional claims against Guerino and Rinaldi also fail to state a claim for which relief may be granted. According to the Complaint, Anthony Guerino represented Mrs. La Sapio in a civil action she brought against Plaintiff and Donald Rinaldi represented Peter and Dean Serratelli against a New Jersey civil action brought by Plaintiff. Plaintiff alleges fraud, violation of attorney ethics rules and criminal statutes. Disregarding the legal conclusions stated in the Complaint, the factual basis for his claims against Guerino are that he impersonated a district attorney in an letter written to Plaintiff in February of 1993 and attempted to secure a \$15,000.00 payment from Plaintiff for Mrs. La Sapio. Regardless of whether New Jersey or Pennsylvania common law fraud applies, both require that the Plaintiff satisfy the element of reliance. Lightning Lube, Inc. v. Witco Corp., 4

F.3d 1153, 1182 (3d Cir. 1993)("The elements for actionable fraud under New Jersey law are proof that the defendant made (1) a material misrepresentation of present or past fact (2) with knowledge of its falsity (3) with the intention that the other party rely thereon (4) and which resulted in reasonable reliance by plaintiff"); Trans Penn Wax Corp. v. McCandless, 50 F.3d 217, 232 (3d Cir. 1995)("Pennsylvania law requires the plaintiff alleging fraud to prove the following elements by clear and convincing evidence: (1) a misrepresentation; (2) a fraudulent utterance of it; (3) the maker's intent that the recipient be induced thereby to act; (4) the recipient's justifiable reliance on the misrepresentation; and (5) damage to the recipient proximately caused.")(quotation omitted). Plaintiff does not claim that he relied on the alleged misrepresentation. Plaintiff never settled his case nor does he allege that he acted in any other way in reliance of the misrepresentation. Plaintiff also alleges that both Guerino and Rinaldi made or were somehow involved in settlement offers related to his claims against Peter and Dean Serratelli. A settlement offer is a routine matter during the course of litigation. Such offers are often encouraged by courts to amicably resolve disputes between the parties and lessen the burden on court systems in general. To the extent that such communications could have violated attorney ethics rules or criminal laws, that issue is not properly before this court and, according to the Complaint, Plaintiff has already proceeded through the appropriate state legal mechanisms for

redress. (Compl. ¶ 51; 59.) Plaintiff also alleges Rinaldi improperly filed a counterclaim against him in Plaintiff's civil action against his brothers, wrongly served him with process and committed other procedural errors in that legal proceeding. Again, to the extent that these claims could be actionable, they raise issues which should have been addressed in the New Jersey court system during the course of that litigation.

In addition to the fact that most of the allegations in this count do not state a claim, there does not appear to be diversity jurisdiction over the surviving allegations in this count. This count does not allege any federal cause of action against these defendants and its relation to the federal claims against the Antitrust Defendants and Judge Newcomer is tangential, at best. This presents an issue of misjoinder of parties, in which case the proper remedy would be the severance of such parties. Fed. R. Civ. P. 21. Jurisdiction over these separate claims cannot stand on supplemental jurisdiction because they do not form part of the same case or controversy as the antitrust claims or the federal procedural and constitutional issues asserted against Judge Newcomer. Therefore, the court must evaluate whether it has independent jurisdiction over the defendants named in the third count. While the defendants in this count appear to meet the diversity of citizenship requirement of 28 U.S.C. § 1332, the issue of the requisite jurisdictional amount presents more difficulty. As noted above, Plaintiff's prayer for relief encompasses all Defendants,



regardless of nature of the claims against them. Thus, the court must assess the amount in controversy for the claims in this count independently from the claims against other defendants. The court finds that even if Plaintiff were to prove the allegations in this count, he would be unable to meet the jurisdictional amount to satisfy the requirements for diversity jurisdiction. Columbia Gas Transmission Corp. v. Tarbuck, 62 F.3d 538, 541 (3d Cir. 1995)("if, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed, or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to recover that amount, and that his claim was therefore colorable for the purpose of conferring jurisdiction, the suit will be dismissed"). Most of Plaintiff's claims in this count fail to state a claim on which this court could grant relief, as discussed above. The remaining claim is that Mrs. La Sapio and Guerino filed a criminal complaint against Plaintiff, which was dismissed following an investigation. Plaintiff does not allege any damages from the investigation, nor does he allege that he was charged with a crime, arrested or otherwise incarcerated. Even if Plaintiff's claim regarding Mrs. La Sapio's civil action against him could be sustained, Plaintiff fails to allege any damages and only states that the civil case was dismissed. The civil action involved an alleged debt of \$15,000.00, far below the jurisdictional amount. Plaintiff's other allegations of offers made and improper service, likewise fail to state any

damages that the court could calculate as fulfilling the amount in controversy requirement contained in 28 U.S.C. § 1332. To the extent that Plaintiff's claims in his third count could otherwise survive the instant motion to dismiss, the court is unable to sustain jurisdiction over the defendants named in this count. Therefore, the court will dismiss the claims against Mrs. La Sapio, Guerino and Rinaldi.

**d. Fourth Count**

Plaintiff's Complaint fails to state a claim against his sister Maria Serratelli Smith. Plaintiff alleges that letters Ms. Smith sent to him were intended to intimidate, harass and defame him in order to coerce him into withdrawing his Complaint. Not one of Plaintiff's allegations contains a statement which could be construed as a threat, even when read in a light most favorable to Plaintiff. For example, Plaintiff alleges that she attempted to intimidate him via a postcard stating "Do not despair. Help is on its way. We will buy the 'lien' from Mrs. La Sapio & rescind it." (Compl. ¶ 74.) Ms. Smith's alleged statement conveys what appears to be concern for Plaintiff's welfare and the details of an attempt to settle financial issues with Mrs. La Sapio, not a threat.

As to Plaintiff's claims for defamation, the closest any of the statements come to defaming Plaintiff is the use of the salutation "Dear Obnoxious" on a postcard addressed to Plaintiff and references to Plaintiff's possible illness and medication therefore. Ms. Smith's use of the term "obnoxious" is

a statement of opinion without implication of underlying facts and so it is not defamatory. See Gordon v. Lancaster Osteopathic Hosp. Ass'n, Inc., 489 A.2d 1364, 1369 (Pa. Super. 1985)(stating "[o]pinion without more is not actionable libel" and that "our court has held that communications which may annoy or embarrass a person are not sufficient as a matter of law to create an action in defamation"). The references to Plaintiff's medical condition, such as "I know you don't feel well" and "send me the names of drugs you're taking. I'll help you," do not rise to the level of a defamation. Under Pennsylvania law, "a statement is defamatory if it tends to harm an individual's reputation so as to lower him in the estimation of the community or deter third persons from associating or dealing with him." 12th Street Gym, Inc. v. General Star Indem. Co., 93 F.3d 1158, 1163 (3d Cir. 1996)(quotations omitted). Even if Plaintiff's allegations are true, Ms. Smith's inquiries into Plaintiff's health do not, on their face, injure Plaintiff's reputation. Thus, the facts as alleged in the Complaint fail to support Plaintiff's claims under the fourth count. Additionally, the court would be unable to sustain diversity jurisdiction over the claims against Ms. Smith, in that the amount in controversy requirement of 28 U.S.C. § 1332 could not be met under the facts as alleged. The court will dismiss the claims against Ms. Smith.

**e. Fifth Count**

The claims in the fifth count fall into two categories. First, Plaintiff alleges that his brothers Peter and Dean

Serratelli committed perjury by submitting affidavits to the court that denied the fact that Plaintiff conducted business dealings with Stein Brothers Import & Export, Inc. Even if Plaintiff's allegations that he "gave explicit guidance and instruction" to his brothers are true they do not state an independent ground for relief. Second, the Complaint alleges that Plaintiff was "pushed out" of the business so that Stein Brothers Import & Export, Inc. could engage in the alleged antitrust activity. Again, this allegation does not state an independent ground for relief other than that set forth in the Complaint's first count as addressed by the court. The court will dismiss the claims in this count.

**f. Sixth Count**

Plaintiff's sixth count is against Jack Serratelli Sr. Plaintiff brings suit for alleged embezzlements by Jack Serratelli Sr. which occurred in the early and mid-1980's and fraudulent inducement of Plaintiff to sign securities documents in 1981. Plaintiff became aware of the alleged embezzlement around the years 1983-84. (Compl. ¶¶ 89-94.) Plaintiff also alleges he was coerced into resigning his position in the family's company and stock holdings, which occurred in 1985. From a reading of the Complaint, it appears that Plaintiff's claims arose in either Pennsylvania or New Jersey, both of which have statutes of limitations that would bar these claims. Under Pennsylvania law, an action for fraud must be brought within two years. 42 Pa. Cons. Stat. Ann. § 5524(7). A contract action

must be brought within four years. 42 Pa. Cons. Stat. Ann. § 5525. The New Jersey statute of limitations for a fraud action is six years. N.J. Stat. Ann. § 2A:14-1. The New Jersey statute of limitations for a contract action is also six years. N.J. Stat. Ann. § 2A:14-1. Plaintiff alleges no facts which would toll the applicable statute of limitations. Thus, Plaintiff's claim as alleged in his sixth count is barred by the statute of limitations. The court will dismiss the claims against Jack Serratelli, Sr.

**B. Defendants' Motions for an Injunction**

The majority of Defendants have filed motions to enjoin Plaintiff from filing future civil actions or further pursuing the present case. Although the remedy of an injunction against the filing of future complaints is an extraordinary one, the court will nonetheless grant the motions. As noted above, all of the Antitrust Defendants in the first count have defended two or three civil actions based on the same grounds, including this one. Judge Newcomer has now faced two suits which have included identical claims. All of the claims in the first and second counts were previously found to be without merit in a final judgment by a court of competent jurisdiction. Plaintiff's actions have demonstrated contempt for the authority of federal courts in issuing final orders and a disregard for the procedures that enable it to properly function.

While the remaining counts raise new issues, it is apparent from the face of the Complaint and the nature of this

action that Plaintiff's intention is to harass those Defendants named in the new counts. For example, in count four Plaintiff states "[a]t this time, in lieu of plaintiff filing criminal harassment charges against defendant Maria Serratelli Smith; only through a confession for the sins of her soul before a jury can she obtain absolution." (Compl. ¶ 79.) The Complaint also states that "Plaintiff looks upon defendant Smith's offer to defendant La Sapio [to pay Mrs. La Sapio the disputed debt] as a means in which defendant La Sapio will have the financial resources guaranteed to pay off the rest of the loan owed to plaintiff after all these years with interest, or else, in the alternative defendant La Sapio will suffer through more litigation as a result of defendant Smith's action." (Compl. ¶ 73.) Plaintiff's view that litigation is a means by which to extract confessions of sin from Defendants or as a mechanism through which to inflict suffering upon Defendants is one which the court cannot condone.

As a whole, the court finds that Plaintiff continues to engage in vexatious, bad faith litigation that manifests an intention to harass the Defendants. Although Plaintiff proceeds pro se, the court is not without recourse to prevent the continuation of such abusive litigation, although such a sanction should be narrowly tailored. See, e.g., Matter of Packer Ave. Assocs., 884 F.2d 745, 746 (3d Cir. 1989)(noting power of district court to "issue injunctions restricting the filing of meritless pleadings by litigants where the pleadings raise issues

identical or similar to those that have already been adjudicated. However, such injunctions are extreme remedies and should be narrowly tailored and sparingly used." )(citations omitted). Plaintiff has had notice of the pending motions for injunctions and has filed a response to one of the motions. (Plf.'s Mem. Opp. to Mot. by Judge Newcomer.) The court will enjoin Plaintiff from filing any complaint similar or identical in substance against Defendants unless Plaintiff obtains previous written leave of the court to do so. Such injunctive relief will provide the Defendants, as well as the court, relief from future repetitive and harassing civil actions, while remaining narrowly tailored to permit Plaintiff access to the court for meritorious filings.

**C. Plaintiff's Motion for Default**

Plaintiff has filed a motion for default against a number of the Defendants. Default judgment is a disfavored method of adjudication, particularly where a defendant can establish a meritorious defense and a plaintiff has not incurred prejudice as a result of the default. See Emcasco Ins. Co. v. Sambrick, 834 F.2d 71, 73 (3d Cir. 1987). Plaintiff does not allege how he has been prejudiced by the delay in Defendant's response. Furthermore, the court has determined that the Complaint either fails to state a claim against Defendants or fails to establish jurisdiction over Defendants. The court will deny Plaintiff's motion for default.

**D. Pro Se Defendants' Counterclaims and Motions for Equitable Relief**

In addition to her request for an injunction against future harassment through civil litigation, Defendant Mrs. La Sapio, acting pro se, has filed what the court will construe as a counterclaim against Plaintiff for \$50,000.00 in mental anguish from the Plaintiff in relation to the \$15,000.00 debt she alleges Plaintiff owes her. (La Sapio Answer at 2.) Also, both Mrs. La Sapio and Smith request that the court enable Mrs. La Sapio to collect her debt. Smith also petitions the court to direct the Plaintiff to undergo psychiatric evaluation and to declare him mentally incompetent. To the extent that Mrs. La Sapio and Smith request the court to remedy the issue of the \$15,000.00 loan, according to their filings Mrs. La Sapio has already litigated the matter fully in a New Jersey state court and obtained a judgment against Plaintiff. She states that they have had difficulty executing on the that judgment. The proper procedure in that instance would be for Mrs. La Sapio to seek the appropriate remedy in a state court under the relevant execution of judgment law rather than litigate the matter in this proceeding. Also, Mrs. La Sapio's reference to a counterclaim is not sufficiently pled to warrant the relief sought. As to Smith's personal concerns for her brother's welfare, even if they were couched in the terms of a counterclaim, the proper procedure would be for her to determine what relief she could obtain and



pursue that relief through the appropriate state law mechanisms, rather than seek relief in this court.

**III.        CONCLUSION**

For the foregoing reasons, the court will grant Defendants' motions to dismiss and for injunctions and will deny Plaintiff's motion for default judgment.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JACK SERRATELLI	:	CIVIL ACTION
	:	
v.	:	
	:	
HICK, MUSE, TATE &	:	
FURST, INC., <u>et al.</u>	:	NO. 98-633

**ORDER**

AND NOW, TO WIT, this 4th day of June, 1998, upon consideration of Defendants' motions to dismiss, Defendants' motions for an injunction, plaintiff Jack Serratelli's ("Plaintiff") motion for default judgment and the respective responses thereto, IT IS ORDERED that:

1. Defendants' motions to dismiss are GRANTED and Plaintiff's Complaint is DISMISSED in its entirety.
2. Defendants' motions for an injunction are GRANTED. Plaintiff is hereby ENJOINED from filing any complaint similar or identical in substance against Defendants unless Plaintiff obtains a previous written court order permitting him to do so. The court will retain jurisdiction over this case for the purposes of ensuring compliance with this Order.
3. Plaintiff's motion for default is DENIED.
4. Defendants Anna Marie La Sapio and Maria Serratelli Smith's remaining motions and counterclaims are DENIED.

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LOUIS C. BECHTLE, J.